

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

<hr/> In re: STRUDEL HOLDINGS LLC AND AVR AH LLC, Debtors.¹ <hr/>	§ § § § § § § § §	Chapter 11 Case No. 23-90757 (CML) (Jointly Administered)
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**DECLARATION OF JAMES W. BURKE IN SUPPORT OF
LENDER PARTIES' MOTION TO DISMISS THE CHAPTER 11 CASES
PURSUANT TO SECTION 1112(b) OF THE BANKRUPTCY CODE**

I, James W. Burke, hereby declare as follows:

1. I am an attorney with Orrick, Herrington & Sutcliffe LLP, counsel for Nineteen77 Capital Solutions A LP and Bermudez Mutuari, Ltd.
2. The statements in this declaration are based on my personal knowledge. If I were called upon to testify, I could and would competently testify to the facts set forth herein.
3. I submit this declaration in support of the Lender Parties' motion pursuant to 11 U.S.C. § 1112(b) to dismiss the chapter 11 cases for Strudel Holdings LLC and AVR AH LLC.
4. Attached as Exhibit 1 is a true and correct copy of the Notice of Motion for Summary Judgment in Lieu of Complaint filed on August 21, 2023 in *Nineteen77 Capital Solutions A LP v. Souki*, Index No. 654043/2023 (N.Y. Sup. Ct. N.Y. Cnty.).
5. Attached as Exhibit 2 is a true and correct copy of a Loan Agreement dated April 27, 2017 (the "2017 Loan Agreement").

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: AVR AH LLC (0148) and Strudel Holdings LLC (5426). The Debtors' service address is: PO Box 4068, Aspen, CO 81612.

6. Attached as Exhibit 3 is a true and correct copy of a Loan Agreement dated March 30, 2018 (the “2018 Loan Agreement”).

7. Attached as Exhibit 4 is a true and correct copy of a Pledge Agreement dated April 27, 2017.

8. Attached as Exhibit 5 is a true and correct copy of a Pledge Agreement dated March 30, 2018.

9. Attached as Exhibit 6 is a true and correct copy of a Deed of Trust dated April 27, 2017.

10. Attached as Exhibit 7 is a true and correct copy of a Deed of Trust dated March 30, 2018.

11. Attached as Exhibit 8 is a true and correct copy of Amendment No. 6 to the 2017 Loan Agreement, which is dated April 30, 2020.

12. Attached as Exhibit 9 is a true and correct copy of Amendment No. 4 to the 2018 Loan Agreement, which is dated April 30, 2020.

13. Attached as Exhibit 10 is a true and correct copy of an Agreement dated May 5, 2020, which relates to the 2017 Loan Agreement.

14. Attached as Exhibit 11 is a true and correct copy of an Agreement dated May 5, 2020, which relates to the 2018 Loan Agreement.

15. Attached as Exhibit 12 is true and correct copy of an email dated May 26, 2022 from Wilmington Trust, N.A. to Charif Souki, and attachments thereto, as retrieved from the public docket for *Souki v. Nineteen77 Capital Solutions A LP*, Index No. 651164/2023 (N.Y. Sup. Ct. N.Y. Cnty.).

16. Attached as Exhibit 13 is a true and correct copy of the Affidavit in Support of Plaintiffs' Motion for Summary Judgment in Lieu of Complaint filed on August 22, 2023 in *Nineteen77 Capital Solutions A LP v. Souki*, Index No. 654043/2023 (N.Y. Sup. Ct. N.Y. Cnty.).

17. Attached as Exhibit 14 is a true and correct copy of the Verified Motion for Order Authorizing Sale of Real Estate by the Public Trustee Pursuant to C.R.C.P. 120 filed on May 16, 2023 in *Wilmington Trust National Association v. AVR AH, LLC*, No. 2023 CV 30050 (Colo. Dist. Ct. Pitkin Cnty.), exclusive of the exhibits thereto.

18. Attached as Exhibit 15 is a true and correct copy of the Response to Verified Motion for Order Authorizing Sale of Real Estate by the Public Trustee Pursuant to C.R.C.P. 120 filed on June 9, 2023 in *Wilmington Trust National Association v. AVR AH, LLC*, No. 2023 CV 30050 (Colo. Dist. Ct. Pitkin Cnty.), exclusive of the exhibits thereto.

19. Attached as Exhibit 16 is a true and correct copy of the Notice of Reset Hearing filed on June 20, 2023 in *Wilmington Trust National Association v. AVR AH, LLC*, No. 2023 CV 30050 (Colo. Dist. Ct. Pitkin Cnty.).

20. Attached as Exhibit 17 is a true and correct copy of the Notice of New Auction Date and Change of Location for Pledged Ajax Holdings Interests sent by Wilmington Trust, N.A. to Charif Souki on July 20, 2023.

21. Attached as Exhibit 18 is a true and correct copy of the Second Amended Complaint filed on July 10, 2023 in *Souki v. Nineteen77 Capital Solutions A LP*, Index No. 651164/2023 (N.Y. Sup. Ct. N.Y. Cnty.).

22. Attached as Exhibit 19 is a true and correct copy of the Memorandum of Law in Support of Order to Show Cause for a Preliminary Injunction and Expedited Discovery filed on

April 3, 2023 in *Souki v. Nineteen77 Capital Solutions A LP*, Index No. 651164/2023 (N.Y. Sup. Ct. N.Y. Cnty.).

23. Attached as Exhibit 20 is a true and correct copy of the transcript of the May 1, 2023 hearing before Justice Andrea Masley in *Souki v. Nineteen77 Capital Solutions A LP*, Index No. 651164/2023 (N.Y. Sup. Ct. N.Y. Cnty.).

24. Attached as Exhibit 21 is a true and correct copy of Justice Andrea Masley's decision to decline to sign an Order to Cause for a Preliminary Injunction, as filed on June 14, 2023 in *Souki v. Nineteen77 Capital Solutions A LP*, Index No. 651164/2023 (N.Y. Sup. Ct. N.Y. Cnty.).

25. Attached as Exhibit 22 is a true and correct copy of the Notice of Defendants' Motion to Dismiss filed on July 25, 2023 in *Souki v. Nineteen77 Capital Solutions A LP*, Index No. 651164/2023 (N.Y. Sup. Ct. N.Y. Cnty.).

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.


JAMES W. BURKE

Executed on August 24, 2023, in Alexandria, Virginia.